

Congress of the United States  
Washington, DC 20515

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May 11, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Chairman Wheeler,

As Co-Chairs of the Congressional Privacy Caucus, we write to express our concern that existing privacy protections enjoyed by cable and satellite subscribers will not be retained as the Commission moves forward on a rulemaking regarding third party navigation devices.

Sections 631 and 338(i) of the Communications Act provide clear and specific protections for the privacy of cable and satellite subscribers. Multichannel Video Programming Distributors (MVPD) must clearly and conspicuously explain data collection and use practices to consumers as well as being prohibited from collecting personally identifiable information without the subscriber's prior consent. Additionally, subscribers are entitled to private rights of action through the federal courts should these privacy protections be violated.

Under the current Commission proposal, third parties would be required to self-certify that they will, and do, adhere to privacy protections in sections 631 and 338. Should the MVPD believe that the third party has violated the self-certification requirement the only remedy to immediately protect customer information would be to shut off service to all users of a third party device or application found to be in violation of the self-certification. This outcome will harm consumers equally if not more so than it would the third party in violation of sections 631 and 338.

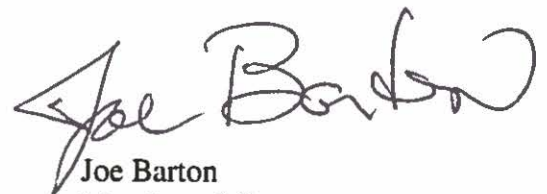
We agree that providing for robust competition in navigation devices, as directed by Congress, should be pursued by the FCC. However the Commission chooses to go forward, its actions cannot result in a loss of privacy protections, customers' loss of service through no fault of their own or that of an MVPD, or customers' private right of action against violators.

We respectfully request that the Commission take these concerns into account and we look forward to hearing from you directly as to how our shared concerns will be addressed moving forward.

Sincerely,



Diana DeGette  
Member of Congress



Joe Barton  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 11, 2016

The Honorable Joe L. Barton  
U.S. House of Representatives  
2107 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Barton:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact the privacy protections afforded to pay-TV consumers. I take your input on this issue seriously and assure you that it will receive careful consideration.

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. Yet, unfortunately, the statutory mandate in section 629 is not yet fulfilled. The lack of competition in this market has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. One of the main contributing factors to these high prices is the no-option, add-on fee for set-top box rental that is included on every bill, forcing consumers to spend, on average, \$231 in rental fees annually. Even worse, a recent congressional investigation found that the price of most equipment fees is determined by what the market will bear, and not the actual cost of the equipment.<sup>1</sup> With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.<sup>2</sup> Clearly, consumers deserve better.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decisions. Our record already contains more than 280,000 filings, the overwhelming majority of which come from individual consumers. FCC staff is actively engaged in constructive conversations with all stakeholders—content creators, minority and independent programmers, public interest and consumer groups, device manufacturers and app developers, software security developers, and pay-TV providers of all sizes—on how to ensure that consumers have the competition and choice they deserve. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

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<sup>1</sup> U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE, MINORITY STAFF REPORT, *INSIDE THE BOX: CUSTOMER SERVICE AND BILLING PRACTICES IN THE CABLE AND SATELLITE INDUSTRY*, 17 (Jun. 23, 2016).

<sup>2</sup> One recent analysis found that the cost of cable set-top boxes has risen 185 percent since 1994 while the cost of computers, television and mobile phones has dropped by 90 percent during that same time period.



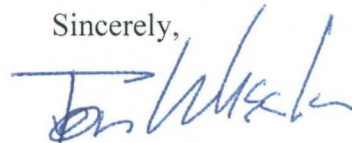
You raised questions about how this proceeding might affect the privacy protections afforded to pay-TV consumers. I share your goal of ensuring that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior consent.

I strongly believe that third-party app developers and device manufacturers must afford consumers the same level of protection as afforded by pay-TV providers. While the NPRM proposes that competitive devices and apps certify compliance with the privacy protections in the Act, we also invited parties to provide alternative proposals that would ensure the preservation of these important privacy protections.

We will continue to engage with stakeholders on this important issue. Notably, our record includes filings on this issue from the Federal Trade Commission (FTC) and a group of state attorneys general (state AGs)—representing the states of California, Illinois, New York, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, Oregon, Pennsylvania, Vermont, and the District of Columbia. In their comments, the FTC and the state AGs explain that—if we require competitive devices and apps to publicly commit to providing the same privacy protections required of pay-TV providers under the Communications Act—the FTC and the state AGs would be willing and able to enforce the privacy commitments made by third party app and device manufacturers just as they currently enforce other privacy commitments made by apps and devices. I am confident that by working with stakeholders and our federal and state partners, we will identify clear rules of the road that will afford consumers with strong privacy protections and the enforcement mechanisms necessary to ensure compliance by third parties.

The record we are developing will help us preserve strong privacy protections while delivering American consumers meaningful choice. Thank you for your engagement in this proceeding, and I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish at the end.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 11, 2016

The Honorable Diana DeGette  
U.S. House of Representatives  
2368 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congresswoman DeGette:

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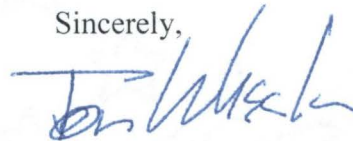
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Tom Wheeler